

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on March 12, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: Rep. Rod Bitney (R)
Rep. Ron Erickson (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 354, 3/7/2001; SB 376,
3/7/2001
Executive Action: None.

HEARING ON SB 354

Sponsor: SEN. BILL CRISMORE, SD 41, Libby

Proponents: Patrick Heffernan, Montana Logging Association
Ronald Buentemeir, Columbia Falls, self
Cary Hegreberg, Montana Wood Products Association
Steve Flynn, Louisiana Pacific
Al Kington, Montana Forest County Coalition
Kim Liles, PPRC
Carl Schweitzer, Helena, self
Bud Clinch, DNRC
Jerry Furtney, Townsend, self
Bob Williams, Hobson, self
Doug Hanson, Bozeman, self
Ed Regan, RY Timber

Opponents: Roy Andes, MonTrust
Steve Kelly, Friends of the Wild Swan
Jim Jensen, MEIC
Joe Lamson, OPI
Pam Bucy, Department of Justice
Brenda Elias, State Auditor
Matt Clifford, Trout Unlimited
Bill LaCroix, Hamilton, self
Janet Ellis, Montana Audubon
Dave Ditloff, Montana Wildlife Federation
Joseph Lerner, Sierra Club
Doug Soehren, Hamilton, public
Mayre Flowers, Citizens for a Better Flathead

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.3}

SEN. BILL CRISMORE, SD 41, Libby, stated SB 354 is simply a bill of fairness to the recipients of the State School Trust Land Fund. It says that if you want to set aside part of those timber lands for other uses other than the traditional uses and planned use of timber harvests you need to pay the fair market value for those lands.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 2.9}

Patrick Heffernan, Montana Logging Association, submitted written testimony **EXHIBIT(nah56a01)** and went over it.

Ronald Buentemeir, Columbia Falls, self, submitted written testimony **EXHIBIT(nah56a02)** and went over it.

Cary Hegreberg, Montana Wood Products Association, gave an overview of State Trust Lands. He handed out the Opinions of the Attorney General concerning the creation of natural areas on state lands **EXHIBIT(nah56a03)**. This bill is attempting to codify this opinion. He went over that opinion. There are over 11,000,000 acres of federal land already set aside for natural areas for old growth. Fundamentally what is wrong with stating that these State Trust Lands are going to be managed by the state of Montana for the purpose of generating revenue for the beneficiary. SB 354 does not preclude the State Board of Land Commissioners from setting aside tracts of land as old growth or natural areas, etc. The bill says that if you do set aside these lands the appropriate trust must be fully compensated.

Ed Regan, RY Timber, stated RY Timber operates two sawmills which create approximately 400 jobs. Approximately 16% of Montana's land base has already been set aside in some form of natural area. Montana taxpayers and school children shouldn't be forced to subsidize any set aside without receiving full monetary compensation. The concept of growing Montana's wilderness system on the backs of our school children is an outrage. He asked for a do pass.

Steve Flynn, Louisiana Pacific, asked the committee to support SB 354.

Al Kington, Montana Forest County Coalition, asked the committee to support SB 354.

Kim Liles, PPRC, stated, Missoula has faced numerous school closures due to lack of funding. There needs to be a balance between school funding and the environment. Whenever any state lands are removed from the trust the schools suffer. He urged a do pass.

Carl Schweitzer, Helena, self, stated there is value in timber which must be maximized for the School Trust.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 29.9}

Roy Andes, MonTrust, stated he is reluctantly opposed to SB 354. He was in favor of the bill in the Senate but has changed his position because of the amendments which were attached in the Senate. The Constitution Enabling Act essentially demands what the bill is asking be done. He went over several reasons he is opposed to the bill. To single out one industry as the focus for legislation that really does nothing more than mimic the constitutional requirements is inappropriate.

Steve Kelly, Friends of the Wild Swan, stated this is a bill designed exclusively for the timber industry. Tree farming is not what we do in Montana on School Trust Lands. Trees have more value to them than just money. He stated that he has some problems with understanding the definitions in the bill. He went over those definitions. If you want to maximize revenue this bill is not the way to go about it. Targeting old growth for just cash value is a serious case that is probably unconstitutional. He asked the committee to consider the non-cash values of our forests.

Jim Jensen, MEIC, stated this bill has an underlying assumption by the proponents that revenue generation is the only legitimate use for School Trust Lands. That is not what the courts have said, it is not what the Enabling Act says, it is not what the Montana Constitution says and it is not what the legislature has said in statute. He stated that this bill is poorly drafted because it does not define terms. He went over different statutes and court decisions regarding this issue.

Joe Lamson, OPI, went over the history of the State Trust Lands and the responsibilities of the State Land Board. He stated, this piece of legislation is confusing and vague. The statutes regarding State Trust Lands contradict the bill. The funds from these lands do not all go to the state schools. K-12 only get about \$.45 on every \$1.00 out of these funds. This bill is unnecessary.

Pam Bucy, Department of Justice, stated the amendments put on by the Senate have forced the Department of Justice to rise in opposition of the bill. It attempts to apply a mandate of obtaining full market value to only trees on forest trust land. That is not how this works. The proponents are interested in obtaining and harvesting timber. This type of mandate cannot be applied piecemeal. If it is going to be applied at all it is going to have to be applied across the board. 77-1-203 requires the board to manage state lands under the multiple use management concept as defined by statutes. That is a balanced approach which doesn't necessarily mean full market value. Passing this bill would not only open the door to litigation it ensures that

state land use would be litigated. She urged the committee not to pass the bill.

Brenda Elias, State Auditor, stated the State Auditor's office opposes SB 354 because it deals with issues and policy matters that should be discussed and decided by the Land Board. Both short-term value and long-term protection of the body of the trust ought to be considered.

Matt Clifford, Trout Unlimited, stated this bill reads the fair market value mandate of the Constitution too broadly.

Bill LaCroix, Hamilton, self, stated that he is a dad who works in the woods. He doesn't see such an aggressive policy helping Montana's children. The problems with school funding is far beyond timber sales. He gave an example regarding the Sula timber sale.

Janet Ellis, Montana Audubon, submitted written testimony **EXHIBIT (nah56a04)**.

Dave Ditloff, Montana Wildlife Federation, stated this bill would essentially change how wildlife management areas are operated. He went over those changes.

Joseph Lerner, Sierra Club, urged the committee to vote against SB 354.

Informational Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 64}

Bud Clinch, DNRC, stated that it is most interesting to listen to the debates on the management of School Trust Lands under his direction. ***{Tape : 1; Side : B; Approx. Time Counter : 0.1}*** The department's position on SB 354 is that the bill merely implements a guiding direction of the Enabling Act of the Constitution, various state statutes, case law as well as the Attorney General's Opinion. This bill deals with more than just timber, it also deals with old growth management. The department does not see this as deviating from the existing mandate that is given in those variety of laws. Nor does the department interpret the bill to mandate the liquidation of old growth or a rampant harvest of the forests. There are a wide variety of factors that go into regulating harvest on state lands as well as private lands and the bill would not change those factors. He talked about the conservation easement bill and how it relates to the wildlife management areas. He went over sustained yield.

REP. WANZENRIED objected to **Mr. Clinch's** testimony saying he is a proponent. **REP. YOUNKIN** stated if **Mr. Clinch** would like to testify as a proponent she would give him time to do so. He went over the multiple use statute and stated that he does not see that statute as a conflict. **REP. YOUNKIN** stated, based on the objection from **REP. WANZENRIED**, **Mr. Clinch** will be shown as a proponent.

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 6}

REP. YOUNKIN asked **SEN. CRISMORE** to discuss the amendments which were put on in the Senate. **SEN. CRISMORE** went over those amendments. He stated that he accepted the amendments to keep the bill moving.

REP. WANZENRIED asked **SEN. CRISMORE** to explain how this bill will work. How will the tracts of land be paid for? In regard to streamside management zones will there be an appropriation by the legislature to cover the appraised value of that strip that is required to be there because of the streamside management zones state law? **SEN. CRISMORE** stated the bill does not say there would have to be some kind of compensation for something that the law says has to be set aside. **REP. WANZENRIED** stated it seems to read that there would have to be compensation for that activity because that resource would not be utilized. The bill does not exempt the law. If you take the face value of that piece of property how would that be paid for? **SEN. CRISMORE** stated that is not the intent of the bill. If that is the case then an amendment would have to be adopted stating that stream side management or what the law says it would take care of would not have to be compensated. **REP. WANZENRIED** stated, there was testimony by the proponents that this bill is intended to simply codify the Attorney General's Opinion. There is no reference in that opinion to forest land, it represents all School Trust Lands. The opponents testified that the spirit of the original act was changed because of the amendments put on in the Senate. He asked **SEN. CRISMORE** to respond to that concern. **SEN. CRISMORE** stated the bill is still talking about School Trust Lands even though all it is talking about is timber lands. **REP. WANZENRIED** asked **SEN. CRISMORE** if he would be adverse to the committee amending the bill back to it's original form. **SEN. CRISMORE** stated he would like to see what the opposition to that would be before he decided it was a friendly amendment.

REP. LAIBLE asked **Mr. Andes** what is the responsibility and function of MonTrust? **Mr. Andes** stated MonTrust is a grassroots

organization of individuals dedicated to promoting and watch dogging the use and management of the School Trust Lands for their exclusive beneficiary. **REP. LAIBLE** stated he is concerned because it seems that this bill does maximize the amount of income potential that is coming off the School Trust Lands. He asked **Mr. Andes** why he is not in favor of this bill. **Mr. Andes** stated part of MonTrust's agenda is necessarily making sure that the management of trust lands adheres to trust principles. One of those principles is maximizing revenue but there are a number of other principles that are embodied in the Constitution and law. This bill seeks to implement the Constitution to a single use and denies any other uses. **REP. LAIBLE** asked, if this applied to all activities on School Trust Lands would you be in favor of this bill? **Mr. Andes** stated that is true and that is why MonTrust supported it in the Senate.

REP. BROWN asked **Mr. Kelly** what his definition of "old growth" is. **Mr. Kelly** stated the definition that Friends of the Wild Swan has agree to support is Green, et al. That is a series of peer reviewed science papers that have been adopted by the Land Board as the definition of old growth. **REP. BROWN** asked **Mr. Kelly** to provide the committee with a copy of that. **Mr. Kelly** suggested that **Mr. Clinch** could probably get that quicker than he could.

REP. BROWN asked **Mr. Lamson** what expertise do OPI employees bring to the table as far as policies governing timber sales. **Mr. Lamson** stated OPI has the duty to oversee the activities of trust lands. OPI does have an expertise in conflict resolution. A lot of time is spent going out and listening to folks, working with the department staff who have tremendous background in these forestry areas and going through that to try and come up with a decision. He gave an example. **REP. BROWN** asked what percentage of the general fund is money generated from the School Trust Lands? **Mr. Lamson** stated there are two main sources that comes off the School Trust Lands. One is the annual presentation of the big check from revenues from the ongoing renewal resources. The other source is from revenues generated from non-renewable resources. That generates about \$25,000,000 into the general fund. There is an infusion of about \$65,000,000 into the general fund from these various activities. **REP. BROWN** asked, what percentage of the general fund is \$69,000,000 from School Trust Lands? **Mr. Lamson** stated about \$1.3 billion is the current state revenues into the general fund.

REP. BALES asked **Mr. Clinch** what is happening on setting aside areas for old growth, how long are those set aside and what is the procedure that you go through on doing that? **Mr. Clinch** went

over the history of old growth and the procedure. **REP. BALES** asked **Mr. Clinch** to comment on the old growth represented in **EXHIBIT(1)**. **Mr. Clinch** stated that he would concur with what **Mr. Heffernan** presented in terms of mean annual increment. He went over that testimony. **REP. BALES** asked does the forest actually lose money by holding these old growths? **Mr. Clinch** stated yes. Once these trees get over mature their growth rate diminishes and the total stand growth diminishes as well.

REP. BALES asked **Mr. Andes**, regarding private timber owners, couldn't they get a conservation easement to leave a certain percentage of the timber in old growth and get reimbursed for that amount. **Mr. Andes** stated yes. That is what should be happening on trust lands as well.

REP. CURTISS asked **Mr. Clinch** what the U.S. Forest Service and BLM are using for the definition of old growth. **Mr. Clinch** stated that the Forest Service and the Land Board have adopted the Green, et al. definition. **REP. CURTISS** asked isn't there a potential for litigation on every sale when you define old growth as every plant that the land is capable of producing? **Mr. Clinch** stated that he is not familiar with any definition along those lines. There probably will be litigation regardless of the definition of old growth and regardless of the passage of this bill or any others. **REP. CURTISS** asked **Mr. Clinch** to compare the mortality rate on an area that is managed for old growth as opposed to normal forest management practices. **Mr. Clinch** stated generally the very definition of old growth is referencing mature stands that are heading into mortality. The trees represented in the progressive forest management illustration of mean annual increment are much younger. **REP. CURTISS** wouldn't management of old growth essentially increase the potential for fire damage? **Mr. Clinch** stated yes. Lack of management increases the risk of wildfire.

REP. STORY asked **Mr. Andes** if he would like to see the stricken language in subsection 6 back in the bill. **Mr. Andes** stated yes. **REP. STORY** asked with that language in the bill if the legislature put a restriction on some property, like the stream side management zones, then would we have to figure out some way to compensate the trust? **Mr. Andes** stated the legislature would have to enact a "police and power rule" which means to general regulations that apply to everyone. This bill is essentially neutral to those questions. The stream side management zone applies to all landowners and therefore it also applies to the trust. **REP. STORY** asked **Mr. Andes** if he would agree that this bill isn't a bill that prohibits or requires anything except compensation for restrictions put on the property. **Mr. Andes**

stated that is his understanding. It would require compensation to the trust for any restriction put on the property. **REP. STORY** asked **Mr. Andes** how he would envision you would value a temporary restriction as opposed to a permanent restriction. **Mr. Andes** stated it would be very difficult to determine a value. MonTrust believes it should be based on the market.

REP. STORY asked **Mr. Lamson** how did he come up with the \$400,000 figure. **Mr. Lamson** stated by the fiscal note. **REP. STORY** stated according to your testimony the State Management Plan puts a sustainable harvest at 42,000,000 board feet of timber. **Mr. Lamson** stated yes. **REP. STORY** asked, if the sustainable harvest is actually 42,000,000 is that including any harvest in these old growth areas? **Mr. Lamson** stated yes we are harvesting old growth and will harvest old growth in the future. **REP. STORY** asked then you don't see this increasing timber harvests? **Mr. Lamson** stated one his major disagreements is that you have a Land Board that is set up to manage these lands. The Land Board is going to be inhibited by this act. **REP. STORY** asked if the sustainable yield is 42,000,000 and they are not going to harvest any more than 42,000,000 ... **Mr. Lamson** stated his reading of this act as a sustainable harvest is 42,000,000 and the only way that you could make a net increase to the general fund is to go beyond the 42,000,000. **Mr. Lamson** gave an example to address **REP. STORY's** questions.

REP. STORY asked **Ms. Bucy** do you believe this bill is not trying to get full value for all of the state land? **Ms. Bucy** stated that is correct. **REP. STORY** asked then if the committee was to amend the bill back to it's original form and also address the state land access fee would the Attorney General look more favorably at the bill? **Ms. Bucy** stated the Attorney General would look more favorably on the bill if this was applied across the board.

REP. DALE asked **Mr. Heffernan** to clarify the difference between the value of wide grain vs. tight grain of old growth. **Mr. Heffernan** stated there are several factors that work in the value. If you have all tight grain timber it may have a higher tensile strength than some open growth timber however, the properties are quite different. He went over those differences. **REP. DALE** asked **Mr. Heffernan** if there is a varying opinion on the value of timber. **Mr. Heffernan** stated his statement was accurate.

REP. DALE asked **Mr. Andes** have these trust principles been ranked in the general management of trusts? **Mr. Andes** stated the ones

that are most often mentioned in court cases are the duties of loyalty, productivity and prudence.

REP. DALE asked **Mr. Schweitzer** to clarify if he believes Montana should sell all of the trust lands and invest the revenue. **Mr. Schweitzer** stated he did not say that.

REP. LASZLOFFY asked **Mr. Andes** if it is legal, given MonTrust's fiduciary responsibility, that the schools do not derive the full benefit of the monies generated from the trust lands. **Mr. Andes** stated he would not think so. MonTrust has already instituted litigation on that issue. **REP. LASZLOFFY** asked are you not able to track those funds from the point of generation to the point of being allocated to the schools? **Mr. Andes** stated that is correct.

REP. HARRIS asked **Ms. Bucy** if she sees a conflict between this bill and 77-1-202. **Ms. Bucy** stated yes and that is why the Attorney General believes this will ensure litigation.

REP. HARRIS asked **SEN. CRISMORE** if he would consider it a friendly amendment to delete that portion of 77-1-202 that says, "and for the attainment of other worthy objects helpful to the well being of the people of this state"? **SEN. CRISMORE** stated that when the bill was drafted the attorneys who worked on it didn't see that as a problem. He would rather leave it like it is. **REP. HARRIS** stated there will be litigation if existing statute is not reconciled with this bill. He asked, do you have an interest in reconciling the two? He clarified that amendment. **SEN. CRISMORE** stated he would not accept that as a friendly amendment.

REP. LAIBLE asked **Mr. Heffernan** is the yield off these lands currently 40,000,000. **Mr. Heffernan** stated the sustained yield as currently set at 42,000,000 board feet per year. **REP. LAIBLE** asked could that yield go up as old growth is recycled and the forests are managed better? **Mr. Heffernan** stated that is exactly what he is alluding to. We cannot only increase the sustained yield on the lands but also increase the type of biodiversity attributes that are needed for these specialized species. **REP. LAIBLE** asked, so if we continue to manage these forests lands better not only will we have more yield, more diversity on the forests we will also have more income? **Mr. Heffernan** stated that is correct but the time element is critical.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 57}

SEN. CRISMORE went over his history with the timber industry and old growth. This bill will generate the much needed money for the schools. He asked for a do pass.

HEARING ON SB 376

Sponsor: SEN. BOB DEPRATU, SD 40, Whitefish

Proponents: Bud Clinch, DNRC

Carl Schweitzer, Bozeman and Kalispell Chambers
Ron Buentemeir, Columbia Falls
Roger Halver, Montana Association of Realtors
Jim Richard, White Sulphur Springs, self
Howard Gipe, Flathead County
Susan Moyer, City of Kalispell
Rick Jordan, Butte, self
Paul Buckley, Butte, self
Betty Whiting, Montana Association of Churches
Tommy Butler, DNRC
Roy Andes, MonTrust
Bob Williams, Hobson, self
Steve Flynn, Louisiana Pacific

Opponents: Mayre Flowers, Citizens for a Better Flathead

Steve Kelly, Friends of the Wild Swan
Jim Jensen, MEIC
Tim Davis, Montana Smart Growth Coalition
Jeff Barber, Montana Wildlife Federation & Montana
Chapter of American Fisheries
Janet Ellis, Montana Audubon

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 0.5}

SEN. BOB DEPRATU, SD 40, Whitefish, stated SB 376 will allow DNRC to participate in local land use planning processes. This will allow local planning entities to decide what the local citizens want. He went over a recent court action in Kalispell. It is a good bill that cleans up language.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 5.3}

Bud Clinch, DNRC, submitted four exhibits **EXHIBIT(nah56a05), EXHIBIT(nah56a06), EXHIBIT(nah56a07)** and **EXHIBIT(nah56a08)** and went over those and the purpose of the bill.

Carl Schweitzer, Bozeman and Kalispell Chambers, stated he fully supports SB 376 for the businesses that are in the Flathead and Gallatin Valley.

Ron Buentemeir, Columbia Falls, stated this bill is needed to allow DNRC to be involved in the local programs and then when they have a specific proposal they can do the MEPA document.

Roger Halver, Montana Association of Realtors, stated SB 376 will clarify that MEPA does not apply to local zoning and planning activities where state lands are involved. It will help streamline the planning process for the potential development of School Trust Lands. This is legislation that will ensure when DNRC and the Board of Land Commissioners participate in planning activities at the local level they are not subjected to unnecessary litigation. This bill will be an effective tool in streamlining MEPA as it adds clarification. He asked the committee's support of SB 376.

Jim Richard, White Sulphur Springs, self, stated the language that was added to this bill in the Senate makes this bill positive. That language clearly requires the department to either comply with MEPA or comply with the local government plans and regulations that are in effect when a proposal is made. He does think the language that was stricken should be reinstated. He asked for a do pass.

Howard Gipe, Flathead County, stated that he strongly supports SB 376 as does the city of Kalispell.

Susan Moyer, City of Kalispell, submitted written testimony from herself and two others **EXHIBIT(nah56a09)**, **EXHIBIT(nah56a10)** and **EXHIBIT(nah56a11)**.

Rick Jordan, Butte, self, submitted written testimony **EXHIBIT(nah56a12)**.

Paul Buckley, Butte, self, submitted written testimony **EXHIBIT(nah56a13)**.

Opponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 44.8}

Mayre Flowers, Citizens for a Better Flathead, explained Citizens for a Better Flathead role in the process that has gone on in Kalispell. She went over some proposed amendments. She stated that the language which was struck in the Senate should be put

back in. The new sections 2 and 3 raise some problems and should be removed. Making this bill retroactive would not speed the process up but it would possibly complicate it. She encouraged the committee to adopt the proposed amendments.

Steve Kelly, Friends of the Wild Swan, stated the striking of the words "or other authorization for use of state lands" limits the trigger effect. He stated if you are going to allow DNRC to plan without MEPA you are going into some dangerous territory. Striking the language is just going to muddy the water. DNRC does not want to do MEPA in it's planning. If DNRC did do MEPA at the earliest possible time it may prevent lawsuits. The effort to reduce duplication and overlapping procedures would be resolved by triggering MEPA at the earliest possible time. He urged the committee to be cautious when looking at this bill.

Jim Jensen, MEIC, urged the committee to look at the issue more broadly than just looking at the situation in Kalispell. **{Tape : 2; Side : B; Approx. Time Counter : 0.1}** SB 376 is not constitutional and will be challenged in court. He submitted a letter from Jack Tuholske **EXHIBIT(nah56a14)**.

Tim Davis, Montana Smart Growth Coalition submitted written testimony from Mark Haggerty **EXHIBIT(nah56a15)**. He stated, this bill, as written, threatens to eliminate local control and local government voices in development decisions in giving that control to DNRC. Local governments need that control to make the decisions to protect public health and safety. He agrees with the amendment to reinstate the stricken language.

There were five letters submitted after the hearing **EXHIBIT(nah56a16)**, **EXHIBIT(nah56a17)**, **EXHIBIT(nah56a18)**, **EXHIBIT(nah56a19)** and **EXHIBIT(nah56a20)**.

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 3.4}

REP. CURTISS asked **Mr. Davis** if he thinks a hearing conducted by the state would better protect the public safety than one by the local planning board? **Mr. Davis** stated he does not believe that. He believes the bill, as written, does not require DNRC to comply with the local planning board.

REP. CURTISS asked **Tommy Butler, DNRC**, to address the issue of constitutionality that has been raised. **Mr. Butler** stated the retroactivity clause is not unconstitutional. It only applies to substantive rights and not procedural rights. He went over a lawsuit regarding that issue.

REP. CURTISS asked **SEN. DEPRATU** if it is his opinion that if DNRC had done what the opponents wanted them to do there would have been a duplicate effort? **SEN. DEPRATU** stated that is correct. This bill really specifies and allows that DNRC can go to the local planning jurisdiction. The opportunity should be given to the local planning jurisdictions first. **REP. CURTISS** asked if the language were to be reinserted wouldn't it be right back in court again? **SEN. DEPRATU** stated yes.

REP. LASZLOFFY asked **Mr. Kelly** what states have a stronger MEPA equivalent in an economy that is as resource based as Montana which is doing better than Montana economically? **Mr. Kelly** stated California and Washington. **REP. LASZLOFFY** asked, do you think California's economy is as natural resource based as Montana's? **Mr. Kelly** stated it is very natural resource based. He asked what is your criteria for being resource based? **REP. LASZLOFFY** stated, it would be a percent of the total economy. **Mr. Kelly** stated he does not know the specific numbers but they have pretty high numbers in that area.

REP. GUTSCHE asked **Mr. Clinch** why does DNRC need the language on page 17 stricken if section 2 provides an exemption for DNRC from MEPA? **Mr. Clinch** deferred the question to **Mr. Butler** who said this debate is all about when MEPA is triggered and what triggers MEPA. There are three things that trigger MEPA. There must be state action, it must be major state action and it must be major state action that is capable of causing significant impacts to the human environment. He gave an example from Kalispell. **REP. GUTSCHE** stated, it seems that you have a double protection by striking the language and then exempting DNRC under MEPA. She asked, what else might the stricken language apply to? **Mr. Butler** stated, it is surplus language that isn't required. SB 376 would clarify the intent of previous HB 142 that DNRC is going to conduct MEPA at the appropriate moment. The problem is that there is judicial decision that has used the words "other authorization for use of state lands" as including participation in local government planning. That was never the intent of HB 142. **REP. GUTSCHE** asked, is DNRC planning to appeal the judge's decision? **Mr. Butler** stated it may not be necessary if SB 376 is enacted by the legislature. **REP. GUTSCHE** asked, if the legislature doesn't enact SB 376 does DNRC plan to appeal the decision? **Mr. Butler** stated, DNRC hasn't made a decision on that as of yet. **REP. GUTSCHE** asked, why should DNRC be exempt from local planning guidelines? **Mr. Butler** read from subpart 3 of the bill. He stated the policy debate is when should MEPA apply. **REP. GUTSCHE** asked, regarding the letter from Mr. Haggerty **EXHIBIT(15)**, how will the local governments be affected by this and how will they be protected? **REP. DALE** restated the question

as, local governments don't have the resources to do MEPA therefore how would they handle that? **Mr. Butler** stated the current state of law is that MEPA only applies to state agencies.

REP. STORY asked **Mr. Davis** was the letter from **Mr. Haggerty** constructed before the Senate amendments got put onto the bill? **Mr. Davis** stated it was constructed after.

Closing by Sponsor:

{Tape : 2; Side : B; Approx. Time Counter : 20.2}

SEN. DEPRATU stated it is important to keep in mind what this bill does. He stated that he would strongly resist any amendments to the bill. He asked for a do concur as the bill stands.

ADJOURNMENT

Adjournment: 6:40 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah56aad)